

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FAIRFIELD BAYSIDE, LLC,

Plaintiff,

v.

CHASYA THIERRY, et al.,

Defendants.

Case No. [24-cv-05508-SI](#)

**ORDER ADOPTING REPORT AND
RECOMMENDATION, AND
REMANDING CASE TO STATE
COURT**

Re: Dkt. Nos. 3, 7

On August 20, 2024, defendants Chasya Thierry, Julianne Thierry, and Clarence Thierry removed this action from Contra Costa County Superior Court on the basis of federal question jurisdiction and applied for leave to proceed in forma pauperis (without prepaying the filing fee). Dkt. Nos. 1, 3. On August 28, 2024, Magistrate Judge Tse issued an order to defendants to show cause why the litigation should not be remanded back to the state court for lack of subject matter jurisdiction. Dkt. No. 4. Judge Tse noted that removal can only be based on the content of the complaint, not an affirmative defense based in federal law. *Id.* Defendant Chasya Thierry responded on September 9, 2024, reiterating defendants' legal arguments and requesting federal court review "on the grounds of diversity jurisdiction and the complexity of the issues involved." Dkt. No. 5. Since the original notice of removal was silent as to diversity jurisdiction, the Court then gave defendants until October 4, 2024 to file an amended notice of removal. Dkt. No. 6. Defendants did not file an amended notice.

On November 15, 2024, Judge Alex Tse issued a Report and Recommendation in this action, advising remand to state court. Dkt. No. 7. The parties had 14 days from service of the Report and Recommendation to serve and file any objections. Fed. R. Civ. P. 72; *see also* Fed. R. Civ. P. 6(d) (extending deadline by 3 days when a party is served by mail). The deadline to object has passed,

1 and no objections have been received.


2 The Court has independently reviewed the filings in this case. The Court agrees with Judge
3 Tse's analysis that federal subject matter jurisdiction is lacking. Defendants have not properly
4 asserted diversity jurisdiction beyond a conclusory statement in their September 9, 2024 memo to
5 the Court. Defendants also cannot assert federal question jurisdiction under 28 U.S.C. § 1331 when
6 the federal law issue is raised in an affirmative defense, not the original complaint. See *Franchise*
7 *Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for S. California*, 463 U.S. 1, 9-11 (1983).
8 Here, the original complaint was for unlawful detainer, a state law cause of action. Dkt. No. 1 at 9-
9 12.

10 Accordingly, the Court ADOPTS the Report and Recommendation at Docket Number 7 in
11 full. This case is REMANDED to Contra Costa County Superior Court.

12 The application from Chasya Thierry for leave to proceed in forma pauperis is dismissed as
13 moot. See Dkt. No. 3. No filing fee is due.

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16 **IT IS SO ORDERED.**

17 Dated: December 3, 2024

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19 SUSAN ILLSTON
20 United States District Judge
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